

## ARTICLE 2. JUDICIAL NOTICE

### Rule 201. Judicial Notice of Adjudicative Facts.

(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

### Comment to 2012 Amendment

The last sentence of subsection (f) (formerly subsection (g)) has been added to conform to Federal Rule of Evidence 201(f), as restyled.

Additionally, the language of Rule 201 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

### Cases

#### Paragraph (b) — Kinds of facts.

**201.b.005** In order for a court to take judicial notice of a fact, the fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

*State v. Wadsworth*, 109 Ariz. 59, 63, 505 P.2d 230, 234 (1973) (appellate court took judicial notice of fact that marijuana is one of most widely used drugs among our young).

*Simon v. Maricopa Medical Center*, 225 Ariz. 55, 234 P.3d 623, ¶ 14 (Ct. App. 2010) (issue was whether City of Phoenix received service of complaint and where complaint was served; court took judicial notice that 200 W. Washington is Phoenix City Hall and the 15<sup>th</sup> floor is office of Clerk of City of Phoenix).

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*State v. Damper*, 223 Ariz. 572, 225 P.3d 1148, ¶ 12 & n.3 (Ct. App. 2010) (defendant was charged with killing girlfriend (C.); shortly before shooting, C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; defendant contended text message was "testimonial"; court stated text message could be testimonial or non-testimonial, depending on circumstances and purpose for which it was made; defendant contended creating text message is necessarily slow and deliberate act; court took judicial notice of "common experience" that some persons are able to "text" at rapid fire pace).

201.b.050 A trial court may take judicial notice of geographical matters.

*In re Roy L.*, 197 Ariz. 441, 4 P.3d 984, ¶ 20 (Ct. App. 2000) (court noted that the "members of this court work in Maricopa County, not on Mount Olympus," and thus they could take judicial notice that Maricopa County has population in excess of 500,000 persons).

*In re Anthony H.*, 196 Ariz. 200, 994 P.2d 407, ¶¶ 6-7 (Ct. App. 1999) (trial court could take judicial notice that Maricopa County has population in excess of 500,000 persons, and this fact was so well known that trial court did not need documentation for that fact).

201.b.063 A trial court may take judicial notice of the age of a person.

*In re Sabino R.*, 198 Ariz. 424, 10 P.3d 1211, ¶¶ 1-7 (Ct. App. 2000) (for charge of underage consumption; juvenile claimed insufficient evidence he was under age; on appeal, state asked court to take judicial notice of juvenile's age, noting (1) juvenile was on juvenile probation at time of offense, (2) proceedings were in juvenile court, and (3) other court files had juvenile's date of birth; court held trial court could have taken judicial notice of other court files, thus so could appellate court).

201.b.067 A trial court may take judicial notice of matters that have gained general acceptance in the scientific community.

*State v. Lebr*, 201 Ariz. 509, 38 P.3d 1172, ¶¶ 16-19 (2002) (trial court took judicial notice of fact that principles and theories of DNA analysis in forensic labs are generally accepted in scientific community and that RFLP method in particular met general acceptance test).

201.b.110 A trial court may not take judicial notice of matters not generally known within the territorial jurisdiction of the court or not capable of accurate and ready determination.

*In re Cesar R.*, 197 Ariz. 437, 4 P.3d 980, ¶ 7 (Ct. App. 1999) (A.R.S. § 13-3111 prohibited juveniles from possession firearms, but applied only to counties with populations over 500,000 persons, which included only Maricopa and Pima Counties; juvenile contended that statute was void as special or local legislation; court could not accept state's invitation to take judicial notice that juvenile street gangs are more likely to exist in Maricopa and Pima Counties and thus those counties have higher rates of juvenile gun-related crimes).

*Higgins v. Higgins*, 194 Ariz. 266, 981 P.2d 134, ¶¶ 20-21 (Ct. App. 1999) (whether child is being harmed by custodial parent's adulterous relationship depends on facts of specific case, and thus is not subject to judicial notice).

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**201.b.120** An appellate court may take judicial notice of any fact of which a trial court could have taken judicial notice, even if the trial court was not requested to take judicial notice.

*State v. Wadsworth*, 109 Ariz. 59, 63, 505 P.2d 230, 234 (1973) (appellate court took judicial notice of fact that marijuana is one of most widely used drugs among our young).

*State v. Rogers*, 216 Ariz. 555, 169 P.3d 651, ¶¶ 25–33 & n.2 (Ct. App. 2007) (court held search of defendant's vehicle was not valid incident to arrest; defendant contended there was no evidence in record of standardized procedure for police inventory search, thus trial court erred in denying motion to suppress based in inevitable discovery; court took judicial notice of Phoenix Police Department Order for inventory searches available on website, and based on that information, concluded police would have conducted inventory search and inevitably discovered inculpatory items).

*In re Sabino R.*, 198 Ariz. 424, 10 P.3d 1211, ¶¶ 1–7 (Ct. App. 2000) (juvenile was adjudicated delinquent for underage consumption of alcohol; juvenile claimed there was insufficient evidence that he was under age; on appeal, state asked court to take judicial notice of juvenile's age, noting that juvenile was on juvenile probation at time of offense and that proceedings were taking place in juvenile court, and further noting that other court files contained juvenile's date of birth; court held trial court could have taken judicial notice of other court files, thus so could appellate court).

*In re Roy L.*, 197 Ariz. 441, 4 P.3d 984, ¶ 20 (Ct. App. 2000) (although trial court did not take judicial notice of population of Maricopa County, appellate court could take judicial notice that Maricopa County has population in excess of 500,000 persons).

**201.b.130** An appellate court may take judicial notice of its own records and the records of other courts.

*In re Sabino R.*, 198 Ariz. 424, 10 P.3d 1211, ¶¶ 1–7 (Ct. App. 2000) (juvenile was adjudicated delinquent for underage consumption of alcohol; juvenile claimed there was insufficient evidence that he was under age; on appeal, state asked court to take judicial notice of juvenile's age, noting that juvenile was on juvenile probation at time of offense and that proceedings were taking place in juvenile court, and further noting that other court files contained juvenile's date of birth; court held trial court could have taken judicial notice of other court files, thus so could appellate court).

*Stubblefield v. Trombino*, 197 Ariz. 382, 4 P.3d 437, ¶ 2 (Ct. App. 2000) (court took judicial notice of fact that trial court judges were ruling in different ways on whether crime of attempted possession of drugs was subject to Proposition 200).

**201.b.140** A trial court or an appellate court may take judicial notice of the contents and disposition of a file, and may take notice that the case exists and that allegations were made, but may not take notice of the truth or falsity of specific allegations except as established by final judgment.

*Mack v. Cruikshank*, 196 Ariz. 541, 2 P.3d 100, ¶¶ 18–19 (Ct. App. 1999) (defendant contended state knew Intoximeter RBT-IV was unreliable; defendants presented trial court with transcript from hearings before another judge in other cases; court noted that other judge had not made any findings of fact or conclusions of law concerning state's knowledge of reliability of that machine, thus court could not take judicial notice of truth of any testimony given).

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### Paragraph (f) — Time of taking notice.

201.f.010 The appellate court may take judicial notice of its own files, and may take judicial notice of any fact of which a trial court could have taken judicial notice, even if the trial court was not requested to take judicial notice.

*State v. Wadsworth*, 109 Ariz. 59, 63, 505 P.2d 230, 234 (1973) (appellate court took judicial notice of fact that marijuana is one of most widely used drugs among our young).

*State v. Rogers*, 216 Ariz. 555, 169 P.3d 651, ¶¶ 25–33 & n.2 (Ct. App. 2007) (court held search of defendant's vehicle was not valid search incident to arrest; defendant contended there was no evidence in record of standardized procedure police would have followed for inventory search, thus trial court erred in denying motion to suppress based in inevitable discovery; court took judicial notice of Phoenix Police Department Order for inventory searches that was available on website, and based on that information, concluded police would have conducted inventory search and inevitably discovered inculpatory items).

*In re Sabino R.*, 198 Ariz. 424, 10 P.3d 1211, ¶¶ 1–7 (Ct. App. 2000) (juvenile was adjudicated delinquent for underage consumption of alcohol; juvenile claimed there was insufficient evidence that he was under age; on appeal, state asked court to take judicial notice of juvenile's age, noting that juvenile was on juvenile probation at time of offense and that proceedings were taking place in juvenile court, and further noting that other court files contained juvenile's date of birth; court held trial court could have taken judicial notice of other court files, thus so could appellate court).

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